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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JOSEPH CESARO et al., Plaintiffs and Appellants, v. QUINN EMANUEL URQUHART OLIVER & HEDGES et al., Defendants and Respondents.	B206865 (Los Angeles County Super. Ct. No. BC 351770)

APPEAL from a judgment of the Superior Court of Los Angeles County, John Shepard Wiley, Jr., Judge. Affirmed.

Appleton, Blady & Magnanimo and Frank A. Magnanimo for Plaintiffs and Appellants.

Quinn Emanuel Urquhart Oliver & Hedges, Eric J. Emanuel and Christopher E. Price for Defendants and Respondents.

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In *Cesaro v. Quinn Emanuel Urquhart Oliver & Hedges* (Dec. 12, 2008, B200220), a nonpublished opinion (referred to hereafter as our previous opinion), we affirmed an order granting a motion dismissing the action; the motion was brought by the defendants under the provisions of Code of Civil Procedure section 425.16.[1] The defendants in that action were the law firm of Quinn Emanuel Urquhart Oliver & Hedges (hereafter the law firm) and three attorneys from that law firm, Harold A. Barza, David W. Quinto and Kristen Bird. The defendants were the respondents in that appeal and they are the respondents in this appeal. The plaintiffs in the previous action were Joseph Cesaro and Sunday Funnies, LLC; they are the appellants in this appeal and we will refer to them collectively as such.

Respondents Barza, Quinto and Bird moved for an award of attorney fees and costs after the trial court had granted the motion to strike and before we filed our previous opinion in December 2008. The law firm did not join in this motion, although the firm represented the individual respondents who were bringing the motion for attorney fees. The trial court awarded respondents Barza, Quinto and Bird $93,415 in attorney fees and $2,220.60 in costs.[2] This appeal is from that order. We affirm.

BACKGROUND

The controversy that spawned the present litigation was a prior suit between appellants, who were the defendants in that controversy, and Mirage Animation doing business as Great American Ink (Mirage).[3] In our previous opinion, we noted that the litigation between Mirage and appellants was bitter, antagonistic and aggressively

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1 This is the statute providing for dismissals of strategic lawsuits against public participation (SLAPP).

2 The judgment for the fee award was entered approximately two months after we filed our previous opinion.

3 We grant appellants' request that we take judicial notice of the record in the previous appeal.

pursued by Mirage. This is material only to the extent that it tends to explain the vigor with which appellants eventually chose to pursue respondents who represented Mirage in that litigation until they voluntarily withdrew as counsel before that action terminated. The fact is that respondents were drawn into the maelstrom of ill will that engulfed Mirage and appellants. While the controversy between Mirage and appellants was eventually settled, appellants chose to pursue respondents by filing what was in substance a malicious prosecution action against them; it was that action that was dismissed when respondents' SLAPP motion was granted. The tenor of that malicious prosecution action is illustrated by the fact that the complaint there set forth eight causes of action, was 35 pages long and, as we noted in our previous opinion, was replete with recitals of grievances, including allegedly criminal misconduct by respondents, set forth in evidentiary detail.

THE SLAPP MOTION

Given this background, it is not surprising that the SLAPP motion was vigorously litigated, to put it mildly. The motion was filed on June 19, 2006, and drew the usual papers filed on the first round of such a motion. Given the length and prolixity of the complaint, these papers were not inconsiderable in length and scope.

On the first of what was to be five hearings on the SLAPP motion, the trial court requested supplemental briefing on whether contempt proceedings (which respondents had brought on behalf of Mirage in the underlying case against appellants) could be the basis of a malicious prosecution claim. (This was one of the issues that was ultimately resolved in respondents' favor in our previous opinion.) The request by the trial court produced a second wave of briefing.

A second and third hearing held in August and November 2006 were inconclusive, although the trial court indicated that it was inclined to grant the motion. In the fourth hearing on January 17, 2007, a new issue surfaced as the result of *Flatley v. Mauro* (2006) 39 Cal.4th 299. This was whether respondents were barred from availing themselves of SLAPP because, as appellants contend, they had allegedly engaged in illegal or criminal activities. (This issue was also resolved in our previous

opinion favorably to respondents with a finding, among others, that there was nothing to show that respondents had engaged in criminal activities.) In any event, the *Flatley* issue spawned another round of briefing. In due course, the SLAPP motion was granted at the fifth hearing held on March 8, 2007.

THE TRIAL COURT'S FEE AWARD

The motion for attorney fees brought by respondents Barza, Quinto and Bird (hereafter collectively the individual respondents) sought an award of $150,840 in attorney fees and $10,138.12 in costs.

Although the individual respondents contended that the fee need not be apportioned between themselves, on the one hand, and the law firm, on the other, they did provide for a 25 percent reduction in the fees and costs claimed. Thus, the total number of hours claimed was 355.8, which yielded fees of $201,120. They reduced the latter figure by 25 percent, which brought their claim to $150,840.

The trial court made two determinations that are basic to the fees and costs actually awarded. First, the trial court applied the 25 percent reduction that the individual respondents had conceded to the number of hours claimed. This brought that number to 266.9 hours. Second, the trial court ruled that it would apply a "blended law firm rate" of $350 per hour. This produced a fee of $93,415, which were the fees awarded.

The principal difference between respondents' claim and the court's award is that respondents' claim was based on an average hourly rate of $565 and the court's ruling was based on $350 per hour.

DISCUSSION

1. The Individual Respondents Are Entitled to Attorney Fees

Citing *Witte v. Kaufman* (2006) 141 Cal.App.4th 1201, 1211, appellants contend that because the individual respondents did not pay and were not obligated to pay attorney fees, they are not entitled to recover such fees from appellants.

Witte v. Kaufman stands for the well-settled proposition that when a law firm represents itself and there is therefore no attorney-client relationship, the firm is not

entitled to attorney fees. This was true of the law firm in *Witte v. Kaufman* when the firm was named as a defendant on an interference with contract cause of action. (*Witte v. Kaufman, supra*, 141 Cal.App.4th at p. 1206.) This rule goes back at least to *Trope v. Katz* (1995) 11 Cal.4th 274, 292, when the court concluded that a law firm that represented itself in a breach of contract action against a client was not entitled to attorney fees.

It is, of course, obvious that this case does not come within the rule laid down in *Trope v. Katz*, at least as far as the individual respondents are concerned. The individual respondents were represented by their firm and there was an attorney-client relationship between them and the firm. The case appellants rely on, *Witte v. Kaufman*, noted that the existence of an attorney-client relationship is "dispositive" when it comes to the recovery of attorney fees under the SLAPP statute, i.e., when there is such a relationship, SLAPP authorizes the recovery of fees. (*Witte v. Kaufman, supra*, 141 Cal.App.4th at p. 1211.)

The fact that the individual respondents did not pay attorney fees and did not incur an obligation to pay such fees is immaterial. Attorney fees may be recovered under the SLAPP statute even if the fees have been previously paid by a third party and the party prevailing on the SLAPP motion has therefore been relieved of the obligation to pay the fees. (*Rosenauer v. Scherer* (2001) 88 Cal.App.4th 260, 284.) As the California Supreme Court explained eight years ago, the fee-shifting provision of the SLAPP statute is intended to impose litigation costs on the party that sought to chill the valid exercise of the right of free speech by initiating litigation. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.) In *Ketchum v. Moses* the party prevailing on the SLAPP motion was represented on a contingent fee basis but was nonetheless entitled to recover attorney fees. (*Ibid.*)

In their reply brief, appellants claim that the individual respondents got a free ride on the firm's efforts to defend itself. Appellants' point seems to be that their action was really only against the firm, which defended itself, and that for this reason the rule laid down in *Trope v. Katz* applies. The answer to this is that it can hardly be

doubted that if the individual respondents had not been defended, appellants would have obtained judgments against them individually; there was every reason to defend these individuals vigorously. Another interesting aspect of appellants' contention is that if they had not cast as wide a net as they did when it came to naming defendants, i.e., if they had named only the law firm as a defendant, the firm could not have recovered attorney fees.

Appellants' claim that the fee was not apportioned to exclude the firm from recovering is entirely mistaken as the trial court discounted the fees by 25 percent. Given that there were four defendants with an equal stake in the litigation, it was reasonable to allocate 25 percent of the attorney fees to each of the defendants.

Appellants' contentions are devoid of merit.

2. The Trial Court's Fee Award Was Reasonable

Appellants claim that the billing rates were unreasonable, that the law firm "double billed" and that the hours billed were excessive.

We begin with the observation that a fee award of $93,415, given the circumstances of this SLAPP motion, was eminently reasonable. There were three waves of briefing and five hearings, not counting a sixth hearing that was adjourned without result because appellants had filed papers in the wrong department and the court could therefore not proceed. As we have noted, it is also true that the complaint was unusually complex, which meant that the initial motion was necessarily time-consuming. Nor can appellants fault the energy with which the respondents replied to appellants' oppositions to the various filings. After all, appellants accused respondents of criminal misconduct.

Appellants' claim that billing rates of $675 and $550 per hour were excessive is pointless as the trial court adopted a blended rate of $350 per hour. We add here that the trial court's decision to adopt a blended rate of $350 was sound and realistic. That two lawyers charged for the same function, e.g. writing briefs, is not double billing because, as respondents correctly point out, it is not unusual for two lawyers to work on a single project. That the hours charged were excessive is simply not true. The

discounted amount of time, 266.9 hours, was reasonable, given three rounds of briefing, five hearings and attacks on respondents that required extra effort and attention because they were so serious. The fact that the motion was filed on June 19, 2006, and not granted until March 8, 2007, is one reflection of the complexities that arose in the handling of this SLAPP motion, and appellants certainly had a hand in creating these complexities.

DISPOSITION

The judgment is affirmed. Respondents are to recover their costs on appeal.

FLIER, J.

We concur:

RUBIN, Acting P. J.

BAUER, J.*

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.